

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE HOUSING AUTHORITY OF THE  
CITY OF DALLAS, TEXAS,

Defendant.

No.

COMPLAINT FOR ENFORCEMENT  
OF AN ADMINISTRATIVE ORDER ON  
CONSENT

(42 U.S.C. § 9622(d)(3))

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action instituted pursuant to Section 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9622(d)(3), against the Housing Authority of the City of Dallas, Texas (hereinafter the "Dallas Housing Authority") to, *inter alia*, enforce a CERCLA Administrative Order on Consent, CERCLA Docket No. 6-21-93, (hereinafter the "AOC") that requires the Dallas Housing Authority to reimburse response costs EPA incurred in overseeing cleanup activities at property owned and operated by the Dallas Housing Authority in the western part of the City of Dallas, Texas.

**PARTIES**

2. Plaintiff is the United States of America.

3. The Defendant, the Dallas Housing Authority, is a political subdivision of the City of Dallas, Texas and has its principal place of business in the City of Dallas, Dallas County, Texas.

4. The Dallas Housing Authority is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **JURISDICTION AND VENUE**

5. This Court has exclusive original jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §§ 9613(b), because this is a controversy arising under CERCLA.

6. This Court also has jurisdiction pursuant to Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3).

7. The Court also has original jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1345 because this is a civil action commenced by the United States that arises under the laws of the United States.

8. Venue is proper within this district pursuant to Sections 113(b) and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9613(b) and 9622(d)(3), because the release of hazardous substances at Operable Unit 2 occurred within this judicial district and because the Dallas Housing Authority has its principal office within this district.

### **BACKGROUND**

9. At all times relevant to this Complaint, the Dallas Housing Authority owned and operated an approximately 460-acre parcel of land known as Operable Unit 2 ("Operable Unit 2") of the RSR Corporation Superfund Site located in the western part of the City of Dallas, Dallas County, Texas.

10. The Dallas Housing Authority continues to own and operate the area comprising Operable Unit 2.

11. The RSR Corporation Superfund Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. Public multi-family housing, schools, parks, recreation facilities, and a day care center are all located within Operable Unit 2.

13. Due to smelting activities from the early 1930s until the mid-1980s at the RSR Corporation Superfund Site, lead, arsenic, and cadmium were "released" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) at Operable Unit 2.

14. Lead, arsenic, and cadmium are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare within the meaning of Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

15. Pursuant to Section VI, Paragraph 9 of the AOC, because of the potential exposure to the general public and residents of the Dallas Housing Authority's housing units from ingesting and inhaling hazardous substances that were present in the soil located at Operable Unit 2, portions of Operable Unit 2 were found to present an imminent and substantial endangerment to human health and the environment.

#### **THE ADMINISTRATIVE ORDER ON CONSENT**

16. Under the provisions of Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), "[w]henver the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree."

17. On August 2, 1993, the Dallas Housing Authority entered into an AOC with EPA Region 6 pursuant to Sections 104, 106, 107, 122(a), and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, 9622(a), and 9622(d)(3).

18. Pursuant to Section VII, Paragraph 27 of the AOC, the Dallas Housing Authority agreed that it is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

19. Under the terms of the AOC, the Dallas Housing Authority agreed to develop a Remedial Investigation/Feasibility Study ("RI/FS") and conduct removal actions to address the

hazardous substances released at Operable Unit 2.

20. Pursuant to Section XXII of the AOC, the Dallas Housing Authority also agreed to reimburse EPA for all response costs incurred by the United States at Operable Unit 2.

21. Pursuant to Section III, Paragraph 4(l) of the AOC, the Dallas Housing Authority agreed that response costs included all direct and indirect costs, as well as oversight costs that the United States incurred in reviewing or developing plans, reports, and other work items required under the AOC, verifying the work, or otherwise implementing, overseeing, or enforcing the AOC.

22. Pursuant to Section XXII, Paragraph 88 of the AOC, the Dallas Housing Authority agreed to reimburse EPA's Hazardous Substances Superfund for all response costs incurred by the United States at Operable Unit 2 no later than 30 days after the receipt of an accounting from EPA of the costs incurred since the prior accounting.

#### **CLAIM FOR RELIEF**

(Enforcement of AOC - CERCLA Section 122(d)(3))

23. The allegations of Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. On April 29, 2002, EPA sent an accounting of response and oversight costs EPA incurred at Operable Unit 2 from June 1, 1994 through January 31, 1998 to the Dallas Housing Authority, through its attorney Laurence K. Gustafson, in the amount of \$260,514.39.

25. Dallas Housing Authority failed to reimburse the United States for such response and oversight costs by May 29, 2002 as required by Section XXII, Paragraph 88 of the AOC, and has failed or refused to reimburse the United States for such costs to date.

26. Pursuant to Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and the terms of the AOC, the United States is entitled to reimbursement from the Dallas Housing Authority of response and oversight costs incurred at Operable Unit 2 in the amount of approximately \$260,514.39.

27. Pursuant to Section XIX, Paragraph 76 and Section XXII, Paragraph 89 of the AOC,

the United States is entitled to interest accruing upon all such un-reimbursed response and oversight costs from May 29, 2002 through the date of payment at the current annual rate specified by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Order the Dallas Housing Authority to pay to the Hazardous Substance Liability Trust Fund \$260,514.39 in un-reimbursed response and oversight costs as demanded in the April 29, 2002 cost accounting;

B. Assess and order the Dallas Housing Authority to pay interest upon the un-reimbursed response and oversight costs demanded in the April 29, 2002 cost accounting at the rate specified pursuant to Section XIX, Paragraph 76 and Section XXII, Paragraph 89 of the AOC, accruing from May 29, 2002 through the date of payment; and

C. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted,

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